

Remarks

A. Status of the Claims

Claims 1-7, 9-16, 19, 23-25, and 27-29 were pending prior to the Office Action mailed August 3, 2009. Claim 1 is amended to remove an unnecessary “is.” Claim 13 is amended to recite “a single passageway along a longitudinal axis of the body which extends between and through a top surface and a bottom surface of the body.” Support for this amendment can be found throughout the specification and drawings as-filed (for example, at FIG. 27). No new matter is added by the amendments. Claims 1-7, 9-16, 19, 23-25, and 27-29 remain pending.

B. Claims 1-6, 9, 12-14, 16, 19, and 23-25 Are Novel Over Lockwood

Claims 1-6, 9, 12-14, 16, 19, and 23-25 were rejected under 35 U.S.C. § 102(a) as being anticipated by Lockwood et al. (WO 02/43634 A2). Applicants respectfully disagree and traverse. Independent claim 1 recites, in part, with emphasis added:

vacuum bandage system comprising: a wound dressing member . . . having a plurality of holes and a port in communication with the holes via one or more *passageways formed in the wound dressing member between the port and the holes . . .*, a wound insert configured for placement within the wound between the wound surface and the wound dressing member . . ., and a cover *configured for placement over the wound dressing member to engage healthy skin surrounding the wound in order to seal about the wound* and create a sealed environment between the wound and the cover in which a negative pressure can be established.

Lockwood does not disclose at least the emphasized features. For example, the Office Action states that, in Lockwood, 220 corresponds to the claimed wound dressing member, 219 corresponds to the claimed wound insert, and 222 corresponds to the claimed cover. But member 219 includes both of wound contacting layer 220 and cover 222 (i.e., 220 and 222 are parts of 219). And in Lockwood, “wound contacting layer 220 and cover 222 cooperate to form passageways 56 which communicate with port 51 of cover 222 and connector 23.” Lockwood,

at p. 23, lines 2-4. As such, Lockwood does not disclose “passageways formed *in the wound dressing member between the port and the holes*,” as recited in claim 1 (emphasis added).

Further, Lockwood does not disclose “a cover configured for placement over the wound dressing member to engage healthy skin surrounding the wound in order to seal about the wound.” The Office Action stated that “[w]ith regard to the limitation “to engage healthy skin surrounding the wound in order to seal about the wound and thus is fully functional to engage healthy skin around the wound.” But this misstates the issue, and is not sufficient to support a rejection.

Claim 1 does not merely recite an intended use or function for a structure. Instead, claim 1 recites a feature of the claimed cover. When a claim recites that a structure is configured in a certain way, the way in which the structure is configured is a feature of the structure – not merely an intended use or function. See, e.g., *Ex parte Boudry*, Appeal No. 2000-1978, Application No. 08/898,905, at *6 (BPAL, unpublished). In *Boudry*, the Board stated:

Additionally, we agree with the appellants that the limitation that the adhesive be configured to contact the wearer's body in use to at least temporarily secure the bodyfacing surface of the diaper or absorbent article directly to the wearer's body is a structural limitation in that it requires placement of the adhesive in a location on the bodyfacing surface of the diaper or absorbent article such that it contacts the wearer's body when the diaper or absorbent article is in use (i.e., on the wearer).

Id. (emphasis in original). The only contact illustrated in FIG. 27 of Lockwood is between wound contacting layer 220 and tissue within the tunneled wound 116. As such, Lockwood does not disclose the claimed cover “configured for placement over the wound dressing member to engage healthy skin surrounding the wound in order to seal about the wound,” and therefore cannot anticipate independent claim 1. Further, there is no motivation to modify Lockwood to include the claimed features.

Independent claim 12 recites, in part, with emphasis added:

A wound insert . . . comprising: a thin, flexible member including a plurality of discrete passageways . . . , the thin, flexible member being *spaced from the suction tube*, wherein the thin, flexible member includes a top surface, a bottom surface, and side surfaces and the *passageways comprise bores* through the body *extending from one side surface to another* and bores through the body extending from the top surface to the bottom surface.

Lockwood does not disclose at least the emphasized features. For example, the suction tube 13 of Lockwood directly contacts and is connected to “wound dressing member 20,” as shown in FIG. 5 of Lockwood. In fact, “tube 13 may be molded as *part of member 20* or *attached to the member* by welding, adhesion, or other known techniques.” Lockwood, at p. 12, line 32 – p. 13, line 1. As such, Lockwood does not disclose a wound insert comprising a thin flexible member being spaced from the suction tube, as recited in claim 12. Further, and as shown in FIGS. 3 and 4 of Lockwood, Lockwood does not disclose bores through the body extending from one *side* surface to another. Lockwood therefore cannot anticipate claim 12. Further, there is no motivation to modify Lockwood to include the claimed features.

Independent claim 13 now recites, in part, with emphasis added:

A wound insert . . . comprising: a body made of a generally non-porous, flexible material, wherein the body is cylindrical in shape, wherein a height of the cylindrical body is substantially greater than a diameter of the cylindrical body, and further wherein the body includes either (i) *a solid top surface and a solid bottom surface*, or (ii) a single passageway along a longitudinal axis of the body which extends between *and through* a top surface and a bottom surface of the body.

Lockwood does not disclose at least the emphasized features. For example, member 219 of Lockwood does not have a solid top surface *and* a solid bottom surface. See, e.g., Lockwood, at FIGS. 27 and 27 (showing open, conical upper structure). Further, member 219 does not include a single passageway along a longitudinal axis of the body which extends between *and through* a

top surface and a bottom surface of the body. Lockwood therefore cannot anticipate claim 13. Further, there is no motivation to modify Lockwood to include the claimed features.

Dependent claims 2-6, 9, 14, 16, 19, and 23-25, each depend from one of claims 1 or 12, and by virtue of at least their respective dependencies, cannot be anticipated by Lockwood. Applicants therefore respectfully request reconsideration and withdrawal of the rejections.

C. Claims 7, 11, 15, 28, and 29 Are Patentable Over Lockwood and Gibertoni

Claims 7, 11, 15, 28, and 29 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Lockwood in view of Gibertoni (EP 1,190,732). Applicants respectfully disagree and traverse. In view of the remarks above regarding independent claims 1 and 13, Lockwood does not anticipate independent claims 1 and 13. Gibertoni does not supply the deficiencies. As such, claims 7, 11, 15, 28, and 29 are patentable, at least by virtue of their respective dependencies from independent claims 1 and 13. *See In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988); MPEP § 2143.03.

Further, there is no motivation to modify Lockwood with the teachings of Gibertoni. Lockwood discloses thin, flexible members for use in a *vacuum* bandage. *See* Lockwood, at Abstract. In contrast, Gibertoni is directed to a drainage element that can produce drainage by capillary action. *See* Gibertoni, at Abstract. There is no indication in either of Lockwood or Gibertoni that the vacuum drainage of Lockwood could even be compatible with the capillary drainage of Gibertoni. Indeed, as shown in FIG. 6 of Gibertoni, “[a]t one of its ends, the collection body 10 is inserted in a discharge tube, designated by the reference numeral 20.” Gibertoni, at col. 3, lines 13-15. If Gibertoni’s collection body were inserted into the port of Lockwood, as would be expressly taught by Gibertoni, it would likely interfere with the vacuum function of Lockwood, rather than “supplement[ing]” it as suggested in the Office Action.

Because independent claims 1 and 13 are patentable, and because there is no motivation to combine Lockwood and Gibertoni, Applicants respectfully request reconsideration and withdrawal of the rejection.

D. Claim 10 Is Patentable Over Lockwood and Hirsch

Claim 10 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Lockwood in view of Hirsch et al. (US 5,080,650). Applicants respectfully disagree and traverse. The Office Action does not suggest combining Lockwood and Hirsch, and instead states that Hirsch discloses knowledge within the art that renders claim 10 obvious. However, in view of the remarks above with respect to independent claim 1, claim 10 is patentable at least by virtue of its dependency from claim 1. *See In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988); MPEP § 2143.03. Applicants therefore respectfully request reconsideration and withdrawal of the rejection.

E. Claim 27 Is Patentable Over Lockwood and Miner

Claim 27 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Lockwood in view of Miner et al. (US 3,860,008). Applicants respectfully disagree and traverse.

As with Gibertoni above, Miner discloses an independent drain. There is no motivation to modify Lockwood with Miner because they are each independent systems that function alone and would interfere with each other if combined. For example, if the drain of Miner were used as the wound insert recited in claims 1 and 27, it would have to be configured for placement within the wound between the wound surface and the wound dressing member, with a cover configured for placement over the wound dressing member to engage healthy skin surrounding the wound in order to seal about the wound and create a *sealed environment between the wound and the cover* in which a negative pressure can be established. This would prevent Miner's drain

from extending outside the cover and would prevent Miner's drain from functioning as a drain. As such, it would simply not make sense to combine the Lockwood and Miner references.

Further, in view of the remarks above with respect to independent claim 1, claim 27 is patentable at least by virtue of its dependency from claim 1. *See In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988); MPEP § 2143.03. Applicants therefore respectfully request reconsideration and withdrawal of the rejection.

Conclusion

Applicants believe that the foregoing remarks fully respond to all outstanding matters for this application.

Should the Examiner desire to sustain any of the rejections discussed in relation to this Response, the courtesy of a telephonic interview between the Examiner, the Examiner's supervisor, and the undersigned attorney at 512-536-3083 is respectfully requested.

Respectfully submitted,



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